

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS PAYTON STANTON,

Defendant-Appellant.

UNPUBLISHED

January 30, 2001

No. 219573

Wayne Circuit Court

LC No. 99-000311

Before: Collins, P.J., and Doctoroff and White, JJ.

MEMORANDUM.

Defendant appeals as of right from his sentence of six and one-half to ten years in prison imposed for his conviction of assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, entered after a bench trial. We affirm.

Defendant was charged with assault with intent to commit murder, MCL 750.83; MSA 28.278, in connection with an incident in which the victim was shot six times. The trial court found defendant guilty of the lesser offense of assault with intent to do great bodily harm and imposed sentence as noted above.

Defendant argues that his sentence is disproportionate to his circumstances and to those of the offense, *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990), and that he is entitled to resentencing before a different judge. We disagree and affirm defendant's sentence. The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). Defendant's minimum term of six and one-half years' was within the sentencing guidelines, and thus is presumptively proportionate. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). The evidence showed that defendant shot the unarmed victim several times in the back as the victim attempted to escape. Defendant had an extensive prior record, including a conviction for second-degree murder, MCL 750.317; MSA 28.549, for which he was on parole absconder status at the time he committed the instant offense. In light of defendant's own circumstances and those of the offense, the factors cited by defendant, i.e., his work history and his need for substance abuse treatment, do not overcome the presumption that that his minimum term is proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Affirmed.

/s/ Jeffrey G. Collins
/s/ Martin M. Doctoroff
/s/ Helene N. White